

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA

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PLAINTIFF,

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CV-05-1086-WKW-DRB

VS.

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**EIGHTY THOUSAND SIX HUNDRED
THIRTY-THREE DOLLARS
(\$80,633.00) IN UNITED STATES CURRENCY;
FOUR THOUSAND EIGHT HUNDRED
SEVENTY-EIGHT DOLLARS (\$4,878.00)
IN UNITED STATES CURRENCY; AND
THIRTY-SIX THOUSAND
FIVE HUNDRED DOLLARS (\$36,500)
IN UNITED STATES CURRENCY**

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DEFENDANTS.

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**MOTION TO WITHDRAW AND/OR DISMISS COUNTERCLAIMS
WITHOUT PREJUDICE WITH LEAVE TO RE-FILE**

Come now the claimants of the defendant U.S. currency, Michael Coleman and Jacquard Merritt, and hereby move this Honorable Court to allow them to withdraw the portion of their Answer designated as “counterclaim”. As grounds for such motion, the claimants submit the following:

1. The claimants filed a counterclaim as part of their answer on 2/22/06, Doc# 23, to preserve specific causes of action against particular unknown government agents and their employers.
2. The United States filed a motion to strike the counterclaim on 3/1/06, Doc# 25.

3. The undersigned has reviewed case law, not limited to that supplied by the United States, as well as the applicable statutes involved, and although the facts as alleged by the claimants support certain specific causes of action, to which this court would have jurisdiction, it appears as though the above styled *in rem* action is not the proper vehicle for their disposition, though they arise from the same transaction. See U.S. v. \$10,000 in U.S. Funds, 863 F.Supp. 812 (S.D. Ill. 1994); Blair v. One Polaroid Land Camera 866 F.2d 1415 (4th Cir. 1989). U.S. v. \$147,349 in U.S. Currency, 747 F.2d 1278 (9th Cir. 1984).
4. However, in the portion of their answer styled “counterclaim”, the claimants aver that they have meritorious claims against certain government agencies and specific government agents for violating their constitutional rights, and are permitted, by law, to address those grievances. See 42 U.S.C. 1983, Bivins v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971).
5. Claimants move this court to allow them to withdraw the “counterclaim” portion of their answer, or in the alternative, dismiss the counterclaims, without prejudice, so that the grievances may be pled with this court at a more appropriate time.

Wherefore, premises considered, the claimants pray that their motion be granted.

Respectfully Submitted,

/s/ Joe M. Reed
Joe M. Reed

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CERTIFICATE OF SERVICE

I herby certify that the following was served on

The Honorable John T. Harmon,
United States Attorney for the Middle District of Alabama,
1 Court Square
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By electronic notification, courtesy of the Clerk of the United States District Court,
Middle District of Alabama.

/s/ Joe M. Reed
Joe M. Reed